IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16553 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PIYUSH JAYANTIBHAI GANDHI & 3 - petitioners(s)

Versus

CHIEF CONTROLLING REVENUE OFFICER & 1 - Respondent(s)

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Appearance :

MR DAKSHESH MEHTA for petitioners(s) : 1 - 4.
MS ARCHANA RAVAL, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/12/2005

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioners have challenged

the legality and validity of the order passed by the Chief Controlling Revenue Authority, State of Gujarat dated 2-6-2005 passed in Stamp Appeal No.32-B-113/02 in dismissing the same and confirming the order passed by the Deputy Collector, Stamp Duty Valuation, Navsari dated 28-2-2002 passed under Section 32(A) of the Bombay Stamp Act (for short “the Act”) by which the petitioners are directed to pay deficit stamp duty of Rs.2,79,098/-.

2. It appears from the record that the petitioners have purchased the property in question by registered sale deed dated 23-7-2001 and the same was registered before the Sub Registrar being Document Register No.2784. It appears from the record that the Sub Registrar, Navsari is of the opinion that the valuation, which is reflected to the sale deed, is not a proper valuation and the petitioners have paid lesser amount of stamp duty and therefore, proceeding under Section 32(A) of the Act was initiated and the petitioners were served with the notice under Rule 4 of the Valuation Rules. It is the contention of the petitioners that the petitioners appeared before the Deputy Collector, Stamp Duty Valuation, Navsari and submitted their reply and after considering the reply, there was a difference with regard to the measurement and

therefore, the Sub Registrar referred the matter to the Planning Assistant for its report and thereafter, the hearing was fixed on 28-2-2002. However, on that day the petitioners could not remain present and on all earlier occasions the petitioners did remain present before the Deputy Collector and therefore, in absence of the petitioners, the Deputy Collector relying upon the report submitted by the Planning Assistant dated 4-1-2002 has passed the impugned order determining the value of the property in question at Rs.42,03,480/- and considering the stamp duty used by the petitioners, directing the petitioners to pay the deficit stamp duty of Rs.2,79,098/-. Being aggrieved by and dissatisfied with the same, the petitioners preferred appeal before the Chief Controlling Revenue Authority under Section 32(B) of the Act and number of submissions were made on behalf of the petitioners. However, the Chief Controlling Revenue Authority, by its order dated 2-6-2005 has dismissed the said appeal confirming the order passed by the Deputy Collector dated 28-2-2002. Being aggrieved by and dissatisfied with the aforesaid two orders, the petitioners have preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. Shri Mehta, learned advocate appearing on behalf of the petitioners has made number of submissions on merits inclusive of that the Deputy Collector has passed the impugned order relying upon the report submitted by the Planning Assistant dated 4-1-2002 and the petitioners have not been served with the said report and the petitioners have not been given an opportunity to controvert the same and therefore the order passed by the Deputy Collector is in breach of principles of natural justice and the same is required to be quashed and set aside. He has also further submitted that in fact no reasons have been assigned by the Deputy Collector on what basis and how the property in question is valued at Rs.42,03,480/- and to that extent the order passed by the Deputy Collector is a non speaking order.

4. Considering the order passed by the Deputy Collector, Stamp Duty Valuation, Navsari impugned in the present Special Civil Application, it appears that while passing the said order and determining the value of the property in question at Rs.42,03,480/-, the Deputy Collector has relied upon the report dated 4-1-2002 submitted by the Planning Assistant and the copy of the

same is not given to the petitioners to meet with the same and/or to controvert the same. Under the circumstances, the impugned order is in breach of principles of natural justice and on that ground alone, the present Special Civil Application is required to be allowed.

5. For the reasons as stated above, the Special Civil Application is allowed. The impugned order passed by the Deputy Collector, Stamp Duty Valuation, Navsari dated 28-2-2002 as well as the order passed by the Appellate Authority dated 2-6-2005 are hereby quashed and set aside and the matter is remanded to the Deputy Collector, Navsari for passing appropriate order in accordance with law and on merits and after giving an opportunity to the petitioners and after supplying the copy of the report of the Planning Assistant dated 4-1-2002 within a period of three months from the date of receipt of this order. However, it is made clear that this court has not expressed any opinion on merits of the case and it is only on the ground that the same is in breach of principles of natural justice and it is ultimately for the Deputy Collector, Stamp Duty Valuation, Navsari to pass afresh order in accordance with law and on merits

and after giving an opportunity to the petitioners as stated above. It is made clear that if any amount is deposited by the petitioners pursuant to the order passed by the Deputy Collector, Stamp Duty Valuation, Navsari dated 28-2-2002, the same is not required to be refunded to the petitioners on remand on the ground that those orders are set aside and the said amount / deposit will be adjusted in future subject to the ultimate outcome of the decision that may be taken by the Deputy Collector, Stamp Duty Valuation, Navsari. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH,J)

shekhar/-